

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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Federal Communications Commission
Office of Secretary

In the Matter of)

Advanced Television Systems)
And Their Impact Upon The Existing)
Television Broadcast Service)

MM Docket No. 87-268

To: The Commission

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PETITION FOR RECONSIDERATION

Western New York Public Broadcasting Association (the "Association"), through its attorneys and pursuant to Section 1.106 of the Commission's rules, hereby files this Petition for Reconsideration in response to the Commission's Sixth Report and Order, released April 21, 1997 in the above-captioned proceeding which adopted the Digital Table of Allotments and related technical rules governing the digital television broadcast service. In support thereof the following is shown:

1. Background. The Association is the licensee of public television Stations WNED-TV and WNEQ-TV, Buffalo, New York. Station WNED-TV currently operates on NTSC Channel 17, and Station WNEQ-TV operates on Channel 23. WNED-TV is the oldest public television station in the State of New York, having operated since 1959. It is widely recognized in PBS circles as the producer of "The Mark Russell Comedy Specials" (which have run on PBS for nearly 25 years), and as co-producer of "Reading Rainbow," the multiple Emmy award winning children's reading series. In its community, WNED-TV is widely known for its strong educational and community outreach programming in such areas as literacy, women's health, AIDS education, the

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environment and educational change. WNEQ-TV has been operated by the Association as a second TV channel providing additional non-commercial public television service to Buffalo and Western New York since 1987.

2. The Sixth Report and Order lay the groundwork for a remarkable advance in television broadcasting. The Association is well aware of the enormity and difficulty of the task undertaken by the Commission to pair DTV allotments for all of the nation's television stations, and it is enthusiastic about the prospects for digital broadcasting. But, as shown below, the allotments proposed for the Association's stations pose major problems. Those problems are complicated by immediate proximity to the Canadian border. The Commission has noted on numerous occasions the pivotal role public television plays in broadcasting and has often afforded special consideration to public television in its policies and rules. Consistent with that position, the Commission has in its digital television decisions continued to recognize the unique challenges public broadcasters will face in their conversion to digital service. Against this background, the Association asks the Commission to reconsider its Sixth Report and Order.

3. The Association Will Likely Need to Supplement this Petition. As a preliminary matter, the Association submits that the complexity of DTV allotments, the lack of essential technical information, and the short time frame available to file petitions for reconsideration of the DTV Table make it impossible to analyze comprehensively current digital assignments and explore acceptable alternatives. The Association has found that the consulting engineering community cannot gear up to run the massive DTV computer program which would allow a proper exploration of alternatives during this 30-day window for seeking reconsideration. In addition, OET Bulletin No. 69,

setting forth interference criteria, has not yet been released. Engineers cannot fully evaluate problems with the current allotments and propose feasible solutions without full technical information. In short, the television licensee community cannot adequately analyze the Commission's complex proposal in time to offer concrete options. However, having had a consulting engineer give a preliminary review of our situation (see attached Engineering Statement), and after a total expenditure of more than \$10,000 for coverage studies and advice, we can state that the allotments proposed for the Association pose substantial problems. We believe the Commission should reconsider its present policy which throws all responsibility for solving the problems arising from its allocation table back on the broadcasting community. The Association and other public stations will have a difficult enough time raising the required capital to convert their stations, let alone spending many thousands of dollars in the search for repairs for a faulty allocations table. We believe the Commission should use its resources to fine tune the DTV Table to maximize allotments for public television stations and to resolve many of the coverage and power inequities its table proposes. The Association submits that it is poor public policy, in view of the long history by the Congress and the Commission itself of affording special consideration to the problems of public broadcasters, to put them now in the position of attempting to locate alternative solutions with obviously limited resources. A public television station can ill afford the expense of seeking its own solution only to discover that with the paucity of channels proposed by the Commission for its core and the difficult border problems encountered by the Association because of its stations' proximity to Canada, there is no solution to be found.

4. The conversion to digital broadcast service is a complex process and broadcasters should be afforded the time needed to analyze their allotments and investigate alternatives which will enable them to best serve the public. Accordingly, the Association requests that the Commission permit it to supplement this pleading with technical data within 90 days from the release of OET Bulletin No. 69. This supplemental filing period would allow the Association to work with its consulting engineers to further delineate the problems presented by the allotments and to develop feasible solutions. This is obviously preferable to forcing prospective digital licensees to move forward without current and accurate information and submit proposals which turn out to not be well based. The latter course would waste public time and money and, perhaps delay the roll-out of digital broadcast service.

5. General Observations and Canadian Border Concerns. The Association's basic problems are:

- (a) that the Commission's proposed table perpetuates the inequity in coverage areas within the Buffalo market;
- (b) that the allotment for WNEQ-TV appears to be susceptible to so much interference from an adjacent channel as to render it unusable; and
- (c) that the lack of any comparable Canadian table of allocations and a long history of dealing with Canadian broadcast regulatory authorities argue for greater power for all border stations at the outset.

Obviously, in the increasingly competitive electronic media environment a public television station requires a coverage area comparable to that of the most powerful stations in the market in order to maximize membership, underwriting, and other revenue. The Association finds it troubling that commercial VHF stations have been

given DTV allotments which significantly extend their reach (in one case a commercial VHF station is given 128% of its present viewer base) and indeed exacerbate the disparity between present VHF and UHF coverage areas, while its public television stations have been restricted to replication of a coverage pattern which is already more limited under current technology. While it is true the Commission's plan allows the Association's stations to basically replicate current coverage, it grants other stations in the market substantial coverage increases on top of their already larger coverage areas, making a currently non-competitive situation even worse. The Association is aware of the possibility the Commission has held out of increasing power in the future. While that may prove a workable solution for some licensees, the Association is concerned that because no Canadian DTV allocation plan now exists, that option may be precluded for border licensees. With a nearly 40- year history of broadcasting from an area immediately adjacent to Canada, the Association is acutely aware how difficult such conflicts between U.S. and Canadian broadcasters and broadcast regulatory authorities can be to resolve. For example, in just the simple area of microwave frequencies, the Association has been unable to resolve a border STL conflict for 10 years. As the Commission knows, border frequency coordination problems are often intractable and, because of the international nature of the negotiations, can become embroiled in other issues and, at the very least, take an extraordinarily long time to bring to an acceptable conclusion. In the meantime, the U.S. broadcaster is left in limbo, and often finds the negotiations cannot be concluded successfully. The Association feels that because of the unknown Canadian allocation table, and because of the international negotiations which will be necessary, it is imperative that the

Association's stations (and, indeed, all border licensees) be granted maximum power in any table permanently adopted by the Commission. Present Canadian-U.S. regulations permit a maximum of one megawatt power for U.S. licensees without negotiation with Canada. The Association requests this maximum be provided for its stations.

6. **Station WNED-TV**. The Association's Station WNED-TV now operating on Channel 17, has been assigned paired digital allotment Channel 43 at 149 kW. The preliminary report from the Association's consulting engineer is that the station may need up to one megawatt of power to approximately duplicate the coverage area the Commission has awarded several commercial stations in the market. But maximization of the use of this channel would result in predicted interference to other stations. The predicted interference would be roughly analogous to interference permitted for at least one other DTV allotment in the market. However, without action by the Commission to declare this amount of interference acceptable for WNED-TV, it may not be possible to secure the consent of potentially affected licensees in such far removed locations as Lorain, Ohio (295.07 km from Buffalo) and Pittsburgh, Pennsylvania (295.60 km from Buffalo). If the Association had the tools available and additional time, it would search for an alternate channel which would permit use of higher power without any potential problems. Lacking both, it hereby requests reconsideration and Commission substitution of such a channel, if possible. If that is not possible, the Association requests that the predicted interference to distant stations, if it expands to one megawatt, be declared acceptable by the Commission.

7. **Station WNEQ-TV.** The Association's Station WNEQ-TV now operates on Channel 23 and has been assigned DTV Channel 32 with 50 kW ERP. According to the preliminary engineering report, the DTV facility would receive substantial interference (396 sq. km) from the Station WGRZ-DTV allotment on adjacent Channel 33. The interference occurs because these two stations have transmitting sites which are 28 miles apart, 180 degrees from each other. Most of the people in the Buffalo metropolitan area live in the 28 linear mile area between the Association's site and the Station WGRZ-TV site. The Association has, at great expense, developed a modern transmitter site for its two public television stations, and given the heavy cost of relocating and present community concerns about tower construction, it is highly unlikely that Station WNEQ-TV and Station WGRZ-TV could be co-located. The fact that the Commission will permit Station WGRZ-TV to operate with one megawatt of power on DTV Channel 33 while Station WNEQ-TV has been limited to only 50 kW on Channel 32 suggests very strongly that the Association's public television signal will be overwhelmed by interference. A modest power increase to 200 kW appears feasible on Channel 32, but likely would not offset the expected major adjacent channel interference problem. The net result is that Station WNEQ-TV's DTV Channel 32 may be unusable, and the Association hereby petitions the Commission for a substitute channel.

8. **The Canadian Wild Card.** As stated earlier, Canada has not yet adopted a DTV plan of its own nor approved the proposed U.S. DTV plan. Historically, Canadian regulatory authorities have been extremely vigorous in protecting the interests of their domestic broadcasters, often to the disadvantage of American broadcast stations. This

is a critical matter because the Buffalo, NY/Toronto/Hamilton, Canada region is one of the most congested television markets in North America. No fewer than twelve stations from the three communities are receivable in the heart of the Buffalo DMA (four of them from Canada) and another ten penetrate other portions of the DMA from Rochester, New York and Erie and State College, Pennsylvania. If the Association's public television stations are to receive fair treatment in future U.S./Canadian agreements, they need maximum power allocations now so that the Association can negotiate from a position of strength when the inevitable border conflicts arise. Indeed, we ask that all U.S. border stations be assigned maximum facilities to protect them for the future. The Commission should consider expanding the number of channels used for DTV to make such solutions feasible. If the Association's stations cannot maximize power on its existing DTV allotments and if alternative channels are not available, they may be forever locked into inferior coverage compared to the VHF commercial stations in the market.

9. While the Association is chartered and licensed to serve Buffalo and environs, its high level of service is sustained in large measure through the support of its many Canadian viewers. Even if the channels assigned to the Association's stations turn out to be the only ones available, the original power levels assigned present a problem. While the Commission has stated that power can be adjusted later, the Association fears that the Canadian authorities may in the interim adopt a border plan which, in effect, locks U.S. stations into power levels which may prove to be insufficient. While the stations may reach current NTSC U.S. viewers, failure to preserve service across the border could cripple the Association financially. It would be most unfair to

impose a DTV regimen which narrowly preserves service to U.S. viewers while undercutting the substantial international support for that service.

10. Reconsideration. In view of this showing, the Association requests the Commission to:

- (a) provide additional core channels in its allocation table;
- (b) provide a period of 90 days from the release of OET Bulletin No. 69 to supplement this Petition;
- (c) make an alternative assignment to Channel 32 for WNEQ-TV in order to eliminate the anticipated adjacent channel interference from DTV Channel 33 as assigned to WGRZ-TV; and
- (d) assign power at one megawatt to both the Association's DTV channels.

Alternatively, the Commission should provide substitute channels for Stations WNED-TV and WNEQ-TV which would permit one megawatt, if such cannot be authorized on presently proposed channels, and work with Canada to protect the Association's allotments from encroachment or hemming in by Canadian DTV allotments.

11. In summary, the Association submits that the original positions taken by the Broadcasters' Caucus and the Association of Public Television Stations to use an expanded number of channels for DTV purposes was the correct one. History may show that what some are now describing as hasty, precipitous action by the Commission will forever limit the ability of many stations to adequately serve the public. This would be especially unfortunate for public stations at a time when it is again being suggested that commercial stations hand over many of their public service responsibilities to non-commercial broadcasters, and when a vigorous public debate has

reconfirmed the nation's need for a strong, reliable and competitive non-commercial broadcasting system.

Respectfully submitted,

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June 13, 1997



ENGINEERING STATEMENT

of

John F. X. Browne, P.E.

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WNED-TV and WNEQ-TV

Buffalo, NY

Western New York Public Broadcasting Association is the licensee of WNED-TV (Channel 17) and WNEQ-TV (Channel 23) serving the Buffalo, NY area with public television services. This statement addresses concerns regarding DTV allotments made by the Commission in its Sixth Report & Order (Docket 87-268).

WNED-TV

WNED-TV was allotted Channel 43 at 149 kW for its DTV service. This allotment appears to be relatively free of interference from other facilities.

There are allotments in the Buffalo market having power levels of 1,000 kW. A study was made to determine whether the facilities of WNED-DTV could be maximized on its Channel 43 allotment; it appears that interference to stations in Syracuse, Cleveland and Pittsburgh would severely limit the ability to make any power increase on Channel 43.

Also of some concern is the allotment of Channel 39 to WIVB, Buffalo, as its DTV allotment. While the Commission has not established any criteria relative to DTV stations separated by four channels, the ACATS recommendations included such requirements. The high power level of the WIVB-DTV facility and its non-colocated site result in some predicted interference to WNED-DTV. (Likewise WNED-DTV may cause similar interference to WIVB-DTV).



WNEQ-TV

WNEQ-TV was allotted Channel 32 for its DTV service at a power level of 50 kW. The principal concern with this allotment is the allotment of Channel 33 to WGRZ-TV at 1,000 kW for its DTV service.

The sites of WGRZ and WNEQ are separated by 45 km; this is far from the ideal colocation situation for adjacent channel facilities. WGRZ-DTV will cause significant interference to the reception of WNEQ-DTV if this allotment plan is implemented.

WNEQ-DTV may not be "maximized" to the power level of other stations in the market because of predicted interference to other NTSC and DTV facilities.

Conclusion

It appears that "maximization" of the DTV facilities of WNED-TV or WNEQ-TV will not be possible.^{1/} Given the fact that several stations in the market will be operating DTV facilities having power levels ranging from 2 to 20 times the power levels allotted to WNED and WNEQ, there is considerable concern regarding the ability to have competitive DTV signals in the Buffalo market.

Other Matters

It is understood that the transborder agreement with Canada regarding the DTV allotments has not been finalized. Thus, additional concerns exist as to whether the allotments as contained in the present table will "survive" that negotiation process and, further, as to whether any "maximization" proposals, however slight they may be, would also be subject to further negotiations and approvals relative to Canada.

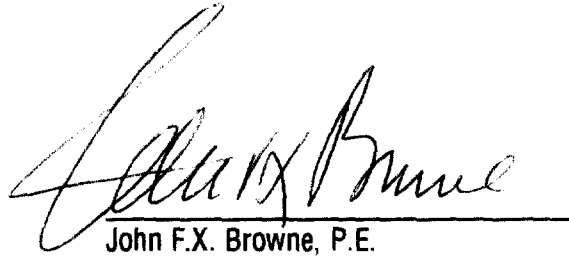
^{1/} At the time this statement was being prepared, OET-69 was not available to guide interference calculations necessary for making power increase determinations.

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Certification

This statement was prepared by me or under my direction. All assertions contained in the statement are true of my own personal knowledge except where otherwise indicated and these latter assertions are believed to be true.

A handwritten signature in cursive script, appearing to read "John F.X. Browne", written over a horizontal line.

John F.X. Browne, P.E.
June 12, 1997